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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,299	02/12/2004	Paul E. Share	13015/39281	5310
62127 7590 04/07/2011 VALSPAR SOURCING, INC. 901 3rd Avenue South PO Box 1461 MINNEAPOLIS, MN 55440-1461			EXAMINER HUSON, MONICA ANNE	
			ART UNIT 1742	PAPER NUMBER
			MAIL DATE 04/07/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/777,299

Applicant(s)

SHARE ET AL.

Examiner

MONICA A. HUSON

Art Unit

1742

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-10,12,14-21 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-10,12,14-21 and 25-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 25 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The parent claim already requires activation by filling.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-10, 12, 14-21, and 25-33 are rejected under 35 U.S.C. 103(a) as obvious over Venkateshwaran et al. (U.S. Patent 5,744,056), in view of Collette et al. (U.S. Patent 5,759,653). Regarding Claims 1, 5, 7, 10, 21, and 25-29, Venkateshwaran et al., hereafter "Venkateshwaran," show that it is known to carry out a method (Abstract) comprising forming a preblend comprising a polyester (Column 6, line 45), a polyamide material (Column 6, line 44; 57-58), and an oxygen scavenging material (Column 4, lines 40-54; Column 6, lines 32-36); providing a base polyester (Column 12, lines 36-40: base resin~suitable packaging resin; Column 13, line 28; Column 14, line 13); introducing the preblend and the base resin into a mold apparatus, injection molding the admixture, and expanding the preform to provide a plastic container having a barrier layer (Column 12, lines 36-44; Column 10, lines 45-50); wherein the plastic container is stable during unfilled storage and the barrier layer has an oxygen scavenging property that is activated after filling the container with an aqueous fluid, wherein activation results from filling (Column 11, lines 59-67; Column 12, lines 1-5;

Column 14, lines 50-66). Venkateshwaran notes that the amounts of polyester, polyamide, oxygen scavenging material, and base resin can vary (Column 8, lines 52-58; Examples 2-5), but he does not show the specifically claimed amounts. However, where the general conditions of a claim are disclosed by the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation (MPEP 2144.05 (II)(A)). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use any appropriate ingredient percentages, such as those claimed, in order to provide the desired level of oxygen scavenging ability. Venkateshwaran does not discuss storage evaluations or comparisons. However, the references teach all the claimed ingredients, process steps, and process conditions and thus, the claimed effects and physical properties would implicitly be achieved by carrying out the disclosed process. If it is applicant's position that this would not be the case: (1) evidence would need to be provided to support applicant's position, and (2) it would be the examiner's position that the application contains inadequate disclosure in that there is no teaching Regarding how to obtain the claimed properties and effects by carrying out only these steps. Venkateshwaran does not show the specifically claimed aromatic polyamide. Collette et al., hereafter "Collette," show that it is known to carry out a method of making a bottle using a polymer containing m-xylylenediamine monomer units (col 10 line 51). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Collette's specific polyamide because there is an art recognized suitability for using Collette's specific polyamide in package-manufacturing methods such as Venkateshwaran's (MPEP 2144.07).

Regarding Claim 2, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the plastic container is a multilayer plastic container (Column 10, lines 50-51), meeting applicant's claim.

Regarding Claims 3, and 31-33, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the plastic container is monolayer (Column 10, lines 50-51), meeting applicant's claim.

Regarding Claim 6, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the preblend is in the form of solid particles (Example 2), meeting applicant's claim.

Regarding Claim 8, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the diluent polyester comprises polyethylene terephthalate (Column 6, lines 45-46), meeting applicant's claim.

Regarding Claims 9, 18, 20, and 30, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 7 above, including a method wherein the base polyester contains PET, which would implicitly be bottle grade (Column 6, lines 37-46; Column 10, lines 40-45; Column 14, lines 13). The Examiner's position will be that any additional post consumer PET does not materially affect the basic and novel characteristics of the claimed invention because it provides PET material which would have the same or substantially the same structure as the virgin material.

Regarding Claim 12, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show the specific polyamide product. Collette shows it is known to make a bottle using a polymerization product of m-xylylenediamine and adipic acid (col 10 lines 51-52). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Collette's specific polyamide because there is an art recognized suitability for using Collette's specific polyamide in package-manufacturing methods such as Venkateshwaran's (MPEP 2144.07).

Regarding Claims 14-15, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the oxygen scavenging material is iron (Column 4, lines 40-54), meeting applicant's claim.

Regarding Claim 16, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show an oxygen scavenging material of cobalt. Collette shows that it is known to make a bottle wherein the oxygen scavenging material comprises cobalt or a metal complex thereof (col 10 lines 24-37). It would have been prima facie obvious to one of ordinary skill in the art at

the time the invention was made to use Collette's specific oxygen scavenger because there is an art recognized suitability for using Collette's specific oxygen scavenger in package-manufacturing methods such as Venkateshwaran's (MPEP 2144.07).

Regarding Claim 17, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not specifically show his base polyester in solid form. Collette shows making a bottle wherein the base polyester is in a form of solid particles (col 5 lines 59-67). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Collette's solid base polyester because there is an art recognized suitability for using Collette's solid base polyester in package-manufacturing methods such as Venkateshwaran's (MPEP 2144.07).

Regarding Claim 19, Venkateshwaran shows the process as claimed as discussed in the rejection of Claim 9 above, including a method wherein the base polyester is polyethylene terephthalate (Column 13, lines 26-28), meeting applicant's claim.

Response to Arguments

Applicant's arguments, see Remarks, filed 2 February 2011, with respect to the rejection(s) of claim(s) 1-3, 5-10, 12, 14-21, and 25-33 under Collette have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Venkateshwaran.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica Huson whose telephone number 571-272-1198. The examiner can normally be reached on Monday-Friday 7:00am-4:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Monica A Huson
Primary Examiner
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